

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION**

ROBBIE L. BURRIS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2:14-cv-00191-JMS-WGH
)	
SUPERINTENDENT, Federal Correctional)	
Complex,)	
)	
Respondent.)	

Entry Discussing Selected Matters

I.

Despite the ambiguous title given to his pleading, Mr. Burris seeks habeas corpus relief pursuant to 28 U.S.C. § 2241. The court honors his choice, *Collins v. Holinka*, 510 F.3d 666, 667 (7th Cir. 2007). Accordingly:

1. The clerk shall change the nature of suit code for this action to 530 and the cause of action code to 28:2241.

2. The proper respondent is the petitioner's custodian, named in his official capacity only. This is the Superintendent of the Federal Correctional Complex, as shown in the caption of this Entry.

II.

Mr. Burris shall have through July 22, 2014 in which to either pay the \$5.00 filing fee or demonstrate that he lacks the financial means to do so.

III.

A 28 U.S.C. § 2255 motion is the presumptive means by which a federal prisoner can challenge his conviction or sentence, *see Davis v. United States*, 417 U.S. 333, 343 (1974), although § 2241 also supplies a basis for collateral relief under limited circumstances. “A federal prisoner may use a § 2241 petition for a writ of habeas corpus to attack his conviction or sentence only if § 2255 is ‘inadequate or ineffective.’” *Hill v. Werlinger*, 695 F.3d 644, 645 (7th Cir. 2012) (quoting 28 U.S.C. § 2255(e)). The Court of Appeals for the Seventh Circuit has held that Section 2255 is only inadequate or ineffective when three requirements are satisfied: (1) the petitioner relies on a new case of statutory interpretation rather than a constitutional decision; (2) the case was decided after his first Section 2255 motion but is retroactive; and (3) the alleged error results in a miscarriage of justice. *See Brown v. Caraway*, 719 F.3d 583, 586 (7th Cir. 2013); *Brown v. Rios*, 696 F.3d 638, 640 (7th Cir. 2012). In *Hill*, the Seventh Circuit reiterated: “‘Inadequate or ineffective’ means that ‘a legal theory that could not have been presented under [Section] 2255 establishes the petitioner’s actual innocence.’” 695 F.3d at 648 (citing *Taylor v. Gilkey*, 314 F.3d 832, 835 (7th Cir. 2002); *In re Davenport*, 147 F.3d 605, 608 (7th Cir. 1998)).

The petitioner shall have through July 22, 2014 in which to show cause why the remedy afforded by 28 U.S.C. § 2255 inadequate or ineffective is inadequate to test the legality of his sentence.

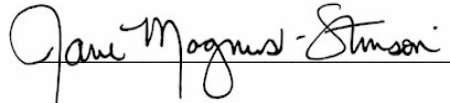
IV.

The pleading filed by Mr. Burris was docketed in the underlying criminal action, No. 2:10-cr-00026-JMS-CMM, as his motion for relief pursuant to 28 U.S.C. § 2255. This Entry

shall be docketed in the underlying criminal action, No. 2:10-cr-00026-JMS-CMM, and the motion for relief pursuant to 28 U.S.C. § 2255 docketed in the underlying criminal action on June 18, 2014 is denied without prejudice.

IT IS SO ORDERED.

Date: 07/07/2014

A handwritten signature in black ink, reading "Jane Magnus-Stinson". The signature is written in a cursive, flowing style. The first name "Jane" is written with a large, open "J". The last name "Stinson" is written with a large, open "S".

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

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